

## **§216.126**

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that surveys are required that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit a report to the Southwest Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,

(2) Design of the monitoring program, and

(3) Results of the monitoring program, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haul-out prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time pinnipeds remained off the haul-out or rookery,

(iv) Numbers of pinniped adults, juveniles or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds that were likely the result of launch noise or the sonic boom.

(e) An annual report must be submitted at the time of renewal of the Letter of Authorization.

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(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from Vandenberg activities, and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.

### **§216.126 Applications for Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.120(a) (30th Space Wing, U.S. Air Force) must apply for and obtain either an initial Letter of Authorization in accordance with §216.127 or a renewal under §216.128.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of pinnipeds.

### **§216.127 Letters of Authorization.**

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §216.128.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

#### **§216.128 Renewal of Letters of Authorization.**

(a) A Letter of Authorization issued under §216.106 and §216.127 for the activity identified in §216.120(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.126 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §216.125(d) and (e), and the Letter of Authorization issued under §216.127, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§216.124 and 216.125 and the Letter of Authorization issued under §§216.106 and 216.127, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.128 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements con-

tained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

#### **§216.129 Modifications of Letters of Authorization.**

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 216.127 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.128, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.120(b), a Letter of Authorization issued pursuant to §§216.106 and 216.127 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

### **Subparts L-M [Reserved]**

## **Subpart N—Taking Of Marine Mammals Incidental To Missile Launch Activities from San Nicolas Island, CA**

SOURCE: 74 FR 26587, June 3, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 26587, June 3, 2009, subpart N, consisting of §§216.150 through 216.159 was added, effective June 2, 2009 through June 2, 2014.

#### **§216.150 Specified activity and specified geographical region.**

(a) This subpart applies only to the incidental taking of marine mammals specified in paragraph (b) of this section by the Naval Air Warfare Center Weapons Division, U.S. Navy, and